

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CITY OF TACOMA, :  
: Plaintiff & Counterclaim Defendant, :  
: v. : Civil Action No.05-62-GMS  
: :  
WORLDGATE COMMUNICATIONS, :  
INC., :  
: Defendant & Counterclaimant. :

**CITY OF TACOMA'S MOTION TO DISMISS  
PURSUANT TO FED.R.CIV.P. 12(b)(6)**

Plaintiff and Counterclaim Defendant, the City of Tacoma, through undersigned counsel, hereby moves, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for entry of an order, in the form attached, dismissing Count IV of WorldGate Communications, Inc.'s Counterclaims. The reasons for the City of Tacoma's motion are set forth in the opening brief being filed herewith.

BIFFERATO GENTILOTTI BIDEN & BALICK

  
\_\_\_\_\_  
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City of Tacoma

Dated: November 7, 2005

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WORLGGATE COMMUNICATIONS, :  
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: Defendant & Counterclaimant. :

**ORDER GRANTING CITY OF TACOMA'S  
MOTION TO DISMISS PURSUANT TO FED.R.CIV.P. 12(b)(6)**

THIS \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the Court having considered the City of Tacoma's Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6) and the briefs filed by the parties in connection therewith,

**IT IS HEREBY ORDERED** that:

1. The City of Tacoma's motion is granted; and
2. Count IV of WorldGate Communications, Inc.'s Counterclaims is dismissed.

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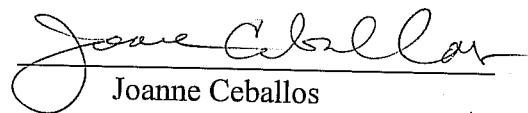
UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I, Joanne Ceballos, hereby certify that on the 7th day of November, 2005, a copy of the foregoing City of Tacoma's Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6) was served by electronic mail on the following counsel for defendant:

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